

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**MATCAL, INC., MARK D. SIMONDS,  
WINGS OVER FRANCHISING, INC.,  
and BMF WINGS, INC.,**

**Plaintiffs,**

**1:05-CV-0993  
(GLS/RFT)**

**v.**

**BRUCE McPHERSON, IRA CHASSEN,  
BMC WINGS, LLC, and WINGZ  
ENTERPRISES, LLC,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

McNAMEE, LOCHNER LAW FIRM  
677 Broadway  
Albany, New York 12207

G. KIMBALL WILLIAMS, ESQ.

**FOR THE DEFENDANTS:**

KAUFMANN, FEINER LAW FIRM  
777 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10017

KEVIN M. SHELLEY, ESQ.

**ORDER**

The court heard the parties orally during a return on plaintiffs' motion for a preliminary injunction, and articulated findings and conclusions of law during the return which are specifically incorporated herein. At that

hearing, the court determined that there exists both irreparable harm to the plaintiffs and a probability that they will succeed on the merits.

The court has further considered the declaration of Mark E. Simonds, sworn to on September 30, 2005, the affidavit of G. Kimball Williams, sworn to on October 4, and the plaintiffs' supporting memorandum of law, also dated October 4, seeking against each of the above-named Defendants the following relief:

- (1) Barring defendants from using the "WINGS" or "WINGS Over ..." brand or service marks for restaurants, the plaintiffs' registered trademarks for products, or telephone numbers associated with defendants' former "WINGS Over" franchises;
- (2) Ordering that the defendants place with the appropriate telephone compan(ies) directions that calls made to those telephone numbers be redirected to plaintiffs;
- (3) Ordering that the defendants post on their menus, menu sign boards, website and all other forms of promotion or advertising a disclaimer, in size no smaller than the largest words on such item, that WINGZ is in no way affiliated with the "WINGS Over ..." franchise; and

- (4) Granting such other and further relief as the court deems proper.

Based upon the foregoing,

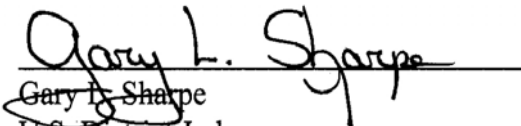
**IT IS HEREBY ORDERED** that defendants cease and desist from using the “WINGS” or “WINGS Over ...” brand or service marks for restaurants, and cease and desist from using plaintiffs’ registered trademarks for products associated with defendants’ former “WINGS Over” franchises; and it is further

**ORDERED** that the court reserves decision regarding the other forms of relief sought by plaintiffs. Specifically, the court reserves decision as to whether defendants should cease using their business phone numbers, relinquishing them to the plaintiffs, and whether defendants should be ordered to issue a disclaimer. The court will issue an amended order addressing these additional prongs upon receipt of the parties’ letter briefs.

**ORDERED** that the Clerk of the Court serve copies of this Order to the parties by regular and/or electronic mail to the addresses listed in the caption above.

**IT IS SO ORDERED.**

November 23, 2005  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge